



Annual Report 2002-2003

Saskatchewan Information
and Privacy Commissioner

Saskatchewan
Information and Privacy
Commissioner



SASKATCHEWAN

103-05487/

R. P. Rendek, Q.C.
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June 11, 2003

Speaker's Office
Province of Saskatchewan
Room 129, Legislative Building
Regina, Saskatchewan
S4S 0B3

Dear Mr. Speaker:

In accordance with the provisions of Section 62(2) of *The Freedom of Information and Protection of Privacy Act*, I am forwarding to you my Annual Report to the Legislative Assembly.

Yours truly,

A handwritten signature in dark ink, appearing to read 'R. Rendek'.

Richard P. Rendek, Q.C.
Acting Freedom of Information
and Privacy Commissioner
Province of Saskatchewan

RPR/new
Encl.



By order in Council 590/2002, due to the resignation of Gerald Gerrand, Q.C. as Information and Privacy Commissioner, I was appointed Acting Information and Privacy Commissioner effective August 1, 2002 to serve at pleasure and until such time as a person is appointed as Commissioner pursuant to section 38 of *The Freedom of Information and Protection of Privacy Act*.

This report is pursuant to the *Freedom of Information and Protection of Privacy Act* and the *Local Authority Freedom of Information and Protection of Privacy Act* and covers the 12 month period which coincides with the government's fiscal year, namely April 1st, 2002 to March 31, 2003.

The role of the Commissioner is to act independently of government in upholding and promoting the spirit and philosophy of the *Freedom of Information and Protection of Privacy Act* and the *Local Authority Freedom of Information and Protection of Privacy Act*.

This necessitates the ability to balance the public's right to access government records and information with the need to protect an individual's privacy with respect to their personal information.

It became apparent to me very shortly following my appointment that my office lacked the necessary resources required to adequately perform the duties required of me under the Act.

In fact, my predecessor's report last year indicated that far more extensive resources in other jurisdictions were being devoted to the operation of the Commissioner's office than in our Province.

He also indicated that with the great increase in the number of privacy issues, as well as the effect of the *Health Information Protection Act*, the workload of the Commissioner's office will increase significantly.

Statistical Information:

This projected increase in the Commissioner's role has been borne out.

For the two years prior to the current one, approximately 200 general enquiries were received and answered in each fiscal year.

As can be seen in Appendix "A", over 400 enquiries were dealt with in the current year.

Appendix B indicates that the number of files opened each year for specific access requests or privacy complaints has increased dramatically during this same 3 year period.

Both these Appendices also demonstrate that the major increases have been in the area of the privacy function of the Commissioner's office.

Financial Information:

As a result of the foregoing, a presentation was made to the Board of Internal Economy to increase the budget of the Commissioner's office to provide for the organizational changes necessary to properly carry out the function of the Commissioner as prescribed by the Act.

These budgeting proposals were approved by the Board and attached hereto as Appendices "C" and "D" respectively are the audited financial statements of my office for the year ended March 31, 2003 and the approved Budget for the year ending March 31, 2004.

Appointment of Full Time Commissioner:

Pursuant to the approved budget, the Board of Internal Economy appointed a Selection Committee and established the Committee's mandate which is referenced as Appendix "E".

Your Committee has met and established the Commissioner's job description, selection criteria and a candidate evaluation process. The competition has been advertised and closes June 23, 2003. Following the interview process, the Committee's recommendations will be forwarded to the Board of Internal Economy with the successful candidate to be appointed by the Legislative Assembly pursuant to Section 38 of the Act.

The appointment of the full time Commissioner is to be effective no later than October 1, 2003.

Specific Issues:

Following the incident respecting the missing hard drive from ISM, I received several complaints from individuals who were concerned about the potential disclosure of their personal information.

I accordingly proceeded to conduct an investigation of the government institutions involved pursuant to Section 33 of the Act to ensure compliance with the Act respecting the protection of personal information.

I obtained from the British Columbia Information and Privacy Commissioner their guidelines respecting Data Services Contracts which apply where public bodies contract out:

1. The processing or storage of information that includes personal information, as defined under *The Freedom of Information and Protection of Privacy Act*;
2. The operation or management of computerized systems that contain personal information; and
3. Services involving the collection, use or disclosure of personal information.

In the ISM case, the third party was contracted to provide storage of personal information.

Each of the Crown Corporations and the Worker's Compensation Board were provided with a copy of these guidelines and asked to review their compliance with same.

Following my investigation, I contacted each of the institutions involved and reported my findings to them as to their compliance with the guidelines and where improvements could be made.

For obvious security reasons, my report must be kept confidential, but in essence the report indicates that although the institutions involved had all attempted to address privacy issues in their contracts with IT service providers, none of them had fully complied with the detailed but necessary guidelines to ensure protection from unlawful disclosure of private personal information. All have indicated they will attempt to follow the guidelines in future service contracts and they have all conducted their own reviews to improve security protection.

I was also asked by the Standing Committee on Crown Corporations of the Legislative Assembly to provide advice and recommendations regarding public disclosure of payee

information by Crown Corporations. I forwarded my report to the committee on March 31, 2003 and I have been requested to appear before the committee at its next meeting. Basically, my report recommends that the Crown Corporations and related entities should be disclosing all of their payee information in the same manner as the government agencies now disclose that information.

Recommendations:

Although my term in office has been relatively brief, I have had occasion to make observations and recommendations regarding the operation of the Act. These views were forwarded to the Department of Justice by letter dated February 9, 2003 which is attached as Appendix "F" to this Report. It is sincerely hoped that these and other issues will be addressed with a view to improving the operations of the Act.

Conclusion:

Generally, with public awareness of the rights created by the Act ever increasing, I believe that the objectives of the Act have been carried out. My main concern is that there is still a tendency by some government institutions to find reasons for refusing disclosure rather than honoring the spirit of the Act and looking for reasons to grant disclosure.

I refer to the comments of Mr. Justice Tallis in the case of *GMAC of Canada v. Saskatchewan Government Insurance* 119 Sask. R 36 wherein he stated:

"The Act's basic purpose reflects a general philosophy of full disclosure unless information is exempted under clearly delineated statutory language. There are specific exemptions from disclosure set forth in the Act, but these limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act.

For this reason alone, I believe a review of the Act, and its operation by an all party committee would be beneficial at this time. I note that under the proposed changes to the rules recently adopted by the Legislative Assembly both this annual report and any proposed amendments to the legislation will be reviewed by separate all party standing committees that will debate these issues and have the ability to conduct public hearings as they deem fit.

In closing, I would like to thank representatives of government and members of the public and the media who have helped me in performing my duties.

I also extend best wishes to my successor in carrying out the very important responsibilities of access to information and privacy rights which I believe are vital in a democratic society.

All of which is respectfully submitted.



Richard P. Rendek Q.C.
Acting Freedom of Information
and Privacy Commissioner
Province of Saskatchewan
June 11th, 2003

APPENDIX A

SUMMARY OF INQUIRIES - 2002/03

DATE	FOI	PRIVACY	GENERAL	TOTAL
April, 2002	5	4	1	10
May	10	13	2	25
June	11	13	3	27
July	12	13	2	27
August	14	17	3	34
September	18	20	5	43
October	25	18	8	51
November	14	18	4	36
December	14	11	3	28
January, 2003	13	23	2	38
February	25	36	2	63
March	22	21	3	46
TOTAL	183	207	38	428

APPENDIX B
SUMMARY OF FILES OPENED

<u>DATE</u>	<u>FOI</u>	<u>PRIVACY</u>	<u>LA</u>	<u>TOTAL</u>
April 1, 2000 to March 31, 2001	27	8	8	43
April 1, 2001 to March 31, 2002	40	8	5	53
April 1, 2002 to March 31, 2003	48	21	6	75

FILES OPENED – CALENDER YEAR

1995	25
1996	34
1997	31
1998	14
1999	23
2000	40
2001	48
2002	67
2003(Projected)	84

APPENDIX C

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

FINANCIAL STATEMENTS

For the Year Ended March 31, 2003



Provincial Auditor Saskatchewan

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1920 Broad Street
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S4P 3V7

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AUDITOR'S REPORT

To the Members of the Legislative Assembly of Saskatchewan

I have audited the statement of financial position of the Office of the Information and Privacy Commissioner as at March 31, 2003 and the statement of operations for the year then ended. The Office is responsible for preparing these financial statements. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, these financial statements present fairly, in all material respects, the financial position of the Office of the Information and Privacy Commissioner at March 31, 2003 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

Regina, Saskatchewan
May 26, 2003

Fred Wendel, CMA, CA
Provincial Auditor

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER
STATEMENT OF FINANCIAL POSITION
As at March 31

	<u>2003</u>	<u>2002</u>
Financial assets:		
Due from the General Revenue Fund	\$ 4,710	\$ 80
	<u> </u>	<u> </u>
Liabilities:		
Accounts payable and accrued liabilities	\$ 4,710	\$ 80
	<u> </u>	<u> </u>
Net financial assets	\$ ---	\$ ---

(See accompanying notes to the financial statements)

**OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER
STATEMENT OF OPERATIONS
For the Year Ended March 31**

	<u>2003</u>		<u>2002</u>
	<u>Budget</u>	<u>Actual</u>	<u>Actual</u>
	<u>(note 3)</u>		
Revenue:			
General Revenue Fund			
-Appropriation	\$ 105,000	\$ 120,967	\$ 83,805
	<u>105,000</u>	<u>120,967</u>	<u>83,805</u>
Expenses:			
Salaries	45,000	63,064	46,000
Office rent	25,200	29,613	25,200
Legal Services	25,000	15,919	6,338
Telephone	1,200	2,934	819
Travel	6,000	2,932	2,251
Supplies and equipment rental	700	2,659	1,485
General contractual services	—	1,926	252
Advertising and printing	1,600	1,008	879
Other	300	912	581
	<u>105,000</u>	<u>120,967</u>	<u>83,805</u>
Total expense	<u>105,000</u>	<u>120,967</u>	<u>83,805</u>
Annual surplus (deficit) for the year	<u>\$ ---</u>	<u>---</u>	<u>---</u>
Accumulated surplus - beginning of year		<u>\$ ---</u>	<u>\$ ---</u>
Accumulated surplus - end of year		<u>\$ ---</u>	<u>\$ ---</u>

(See accompanying notes to the financial statements)

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER
NOTES TO THE FINANCIAL STATEMENTS
For the Year Ended March 31, 2003

1. Authority and description of operations

The *Freedom of Information and Protection of Privacy Act* states that the Lieutenant Governor in Council, on the recommendation of the Assembly, shall appoint an Information and Privacy Commissioner. The Commissioner is an officer of the Legislative Assembly and is appointed by resolution. The mandate of the Office is to review Government decisions under *The Freedom of Information and Protection of Privacy Act* to ensure the protection of the public's right to access records held or controlled by the Government and to ensure that personal information is only collected and disclosed according to the manner and purposes set out in the Act.

2. Summary of accounting policies

The Office used Canadian generally accepted accounting principles to prepare its financial statements. The following accounting policies are considered to be significant:

a) Basis of accounting

The financial statements are prepared on the accrual basis of accounting.

b) Revenue

The Office receives an appropriation from the Legislative Assembly to carry out its work. General Revenue Fund appropriations are included in revenue when amounts are spent or committed. The Office's expenditures are limited to the amount appropriated to it by the Legislative Assembly

3. Budget

These amounts represent funds appropriated by the Board of Internal Economy to enable the Commissioner to carry out his duties under *The Freedom of Information and Protection of Privacy Act*. The Board of Internal Economy also approved additional special warrant funding for the Office in the amount of \$31,000.

4. Costs borne by other agencies

The Office has not been charged with certain administrative costs. These costs are borne by the Legislative Assembly. No provision for these costs is reflected in these financial statements.

5. Lapsing of appropriation

The Office follows *The Financial Administration Act, 1993* with regards to its spending. If the Office spends less than its appropriation by March 31, it must return the difference to the General Revenue Fund.

6. Financial Instruments

The Office's financial instruments include due from the General Revenue Fund and accounts payable. The carrying amount of these instruments approximates fair value due to their immediate or short-term maturity. These instruments have no significant interest rate and credit risk.

7. Statement of cash flow

A statement of cash flow is not presented, as the required cash flow information is readily apparent from the other financial statements.

8. Related Party Transactions

For the period of April 1, 2002 – August 31, 2002, the Office of the Information and Privacy Commissioner leased office space from the law firm Gerrand Rath Johnson, one of whose partners was a member of the commissioner's immediate family. The terms of the lease agreement provided the Information and Privacy Commissioner with office space, clerical support and equipment, a parking space, use of the firm's library resource and boardroom as well as incidental office supplies apart from stationery. The total office rent expense associated with this lease agreement was \$ 10,500.

9. Comparative Figures

Certain comparative figures have been reclassified to conform to the current year's presentation.

APPENDIX D

APPROVED BUDGET 2003-2004

Personal Services	\$148,000
Contracted Services	74,500
Advertising	17,000
Travel and Business	9,000
Supplies and Services	4,500
Equipment and Fixed Assets	53,000
	306,000

RECEIVED

MAR 05 2003

Memorandum

To: Ms. Wynne Young, Chair, Public Service Commission
Hon. Lorne Calvert, Premier
Mr. Elwin Hermanson, Leader of the Opposition
CC: ✓ Mr. Richard Rendek, Information and Privacy Commissioner
Ms. Gwenn Ronyk, Clerk

From: Hon. P. Myron Kowalsky, Chair, Board of Internal Economy

Date: February 27, 2003

Re: Selection Committee – Information and Privacy Commissioner

On February 27, 2003 the Board of Internal Economy of the Legislative Assembly passed the following motion regarding the recruitment and selection process for the position of Information and Privacy Commissioner:

That for the recruitment process for the Information and Privacy Commissioner, the Board appoint a selection panel of senior officials composed of the Clerk of the Legislative Assembly, Chair of the Public Service Commissioner or designate, the current Acting Information and Privacy Commissioner, and a representative designated by Government and a representative designated by the Official Opposition;

And that the mandate of the panel be:

1. to hold an open, national competition,
2. develop a selection criteria,
3. screen and interview applicants, and
4. make a recommendation to the Board of Internal Economy.

I would ask that you advise me as soon as possible with the name of your designate who will serve on the committee. Thank you for your attention to this matter.

P. Myron Kowalsky

Hon. P. Myron Kowalsky

APPENDIX F

February 19, 2003

Mr. Darcy McGovern
Crown Counsel
Legislative Services
Saskatchewan Department of Justice
8th Floor, 1874 Scarth Street
Regina, Saskatchewan
S4P 3V7

Dear Mr. McGovern:

As discussed at our recent meeting with the Deputy Minister of Justice, I am enclosing some observations and recommendations regarding the operation of the Freedom of Information and Protection of Privacy Act, which would also apply to its companion Local Authority Freedom of Information and Protection of Privacy Act.

As you know, I have only held this office for seven months so these comments are certainly not exhaustive but reflect situations that have come to my attention during this period of time.

In brief, they are as follows:

1. As you know, under our statute the Commissioner cannot make Orders but can only make recommendations. In other jurisdictions the Commissioner can actually order documents to be disclosed. A few examples are:

British Columbia	Section 58
Alberta	Section 72
Ontario	Section 54

All Acts contain provisions for some form of judicial review of the Commissioner's decision.

This lack of authority can act as a deterrent as it imposes both a time and cost burden on an applicant if a Commissioner's recommendation to grant access is not followed by the Department Head. In addition, it creates the perception that the Government is adopting a delaying tactic.

2. Similarly, the Appeal process appears to be unfair to an Applicant as if the Commissioner recommends that access be granted and the Head still refuses to do so, it is the Applicant, who has been the successful party, who must appeal.

If the Department Head does not agree with the Commissioner's recommendation to disclose, then it should be the Government who has to appeal.

Again, this creates a time and cost factor which can discourage Applicants and cause them to abandon their access request.

3. It is noted that most other jurisdictions give the Commissioner the power to delegate the authority he derives under the Act (other than to further delegate) whereas the Saskatchewan Act contains no such provision (Alberta Section 61; British Columbia Section 49).
4. Other jurisdictions also require the head of a public body to protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal (Alberta Section 38; British Columbia Section 30). This would include security arrangements as to storage.

I previously provided you with a set of Guidelines for Data Service Contracts established by the office of the British Columbia Information and Privacy Commissioner. I believe similar such guidelines should be adopted and placed into force (by Regulation or otherwise) and be applicable to all our provincial government institutions and local authorities.

5. Section 16(2) of our Act provides that access to documents shall not be refused to records that have been in existence for over 25 years. Many other jurisdictions including Alberta and British Columbia specify 15 years. In addition, consideration should be given to removing exemptions to disclosure of material used by Cabinet after a decision has been adopted by Cabinet. This is the case in Nova Scotia as reviewed in O'Connor v. Nova Scotia (2001) N.S.S.C6.
6. I have received several complaints to the effect that the exemptions from disclosure contained in the Act are too numerous and that the Act should be reformed so as to improve access by the public to government information.

The Federal Government created a task force for just such a purpose in 2000 but unfortunately they did not do so by means of a public process but instead they conducted an internal review by bureaucrats.

Alberta's Act has only been in force for 8 years and they have already conducted 2 three year reviews. The reviews are conducted by an all-party Committee who circulated a discussion guide to more than 1,500 individuals, public bodies or other organizations. Over 125 submissions were received by the Committee

resulting in 62 recommendations to amend the Act, most of which were adopted and are presently before the Legislature for approval.

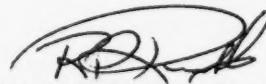
The task force's report and the Federal Information Commissioners response by way of a Special Report are currently tabled before the House of Commons.

7. Our Local Authority Freedom of Information and Protection of Privacy Act does not apply to the various City Police Services in the Province, whether intentionally or by oversight. This causes concern respecting privacy issues as complaints have been received as to the improper dissemination of personal information by police officers to third parties.
8. Section 54 of the Alberta Act provides that the Head of a public body may ask the Commissioner to give advice and recommendations on any matter respecting any rights or duties under the Act. A similar provision could be added to the Commissioner's general powers under Section 54 of the Act.
9. One final comment:

Privacy issues are becoming more and more predominant and will greatly increase with the proclamation of the provincial Health Information Protection Act and the federal Personal Information Protection and Electronic Documents Act which will apply to Saskatchewan on January 1, 2004 unless we pass similar legislation before then. We must ensure that we keep pace with emerging technology so that each individual's personal information is protected and only disclosed as provided in the Act. Guidelines should be developed to advance this purpose and also to ensure that personal information is collected by government institutions only as provided for in the Act.

I would be pleased to discuss this matter further with yourself and the Deputy Minister if you so require.

Yours truly,



Richard P. Rendek, Q.C.
Acting Freedom of Information
and Privacy Commissioner
Province of Saskatchewan

RPR/jmo

cc: Deputy Minister, Doug Moen

